

SEALING YOUR CRIMINAL RECORD: Eliminating Public Access to Information about Criminal Cases Resulting in Arrest, Dismissal or Acquittal by Lindsay Hutchinson

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Adam is 22 years old and just graduated from a local university. His undergraduate degree landed him a good job in sales, and he is already making plans to go back to school for his MBA. He has a wide circle of friends with whom he often hits up the local bar scene. One day, after a particularly raucous night on the town, Adam gets a call from a detective. A woman accused him of grabbing her breast outside of a bar. Adam is arrested and his world is turned upside down as he is forced to defend himself in court. Thankfully for Adam, he hires an effective attorney and the case is ultimately dismissed. He thinks the worst is behind him...until he applies for graduate school and is required to disclose information about the case on his application, or he applies for a job and the manager asks about the case during the job interview. Is there anything Adam can do to protect himself from encountering this type of embarrassing – and potentially opportunity barring – experience going forward?

If you have ever had the misfortune of being accused of a crime, then you understand the weight of the burden levied upon you the second you enter the criminal justice system. Being charged with a crime can cause embarrassment, loss of personal and professional relationships, and even impact future educational and employment opportunities. Above all, it may leave you feeling like getting your life back on track is nearly impossible. Unfortunately, even cases that are resolved successfully – where the defendant avoids a criminal conviction – leave behind scars and a record can cause serious problems down the road. The *good news* is that you may be eligible to seal those records from public consumption, including many employers and educational institutions, with the help of a good attorney. This is accomplished by filing a Petition to Seal. The first step is to determine *if your case is eligible* to be sealed. The second step is to effectively argue to the court *why your record should* be sealed.

Colorado Revised Statutes §24-72-308 to 308.8 provide authority for a court to grant an individual's request to seal his or her criminal record under certain circumstances¹. Generally speaking, if your case resulted in anything other than a permanent conviction, you are eligible to request that the records associated with that case be sealed. This includes but is not limited to the following circumstances: (1) an individual is arrested but no charges are filed; (2) an individual is arrested and charges are filed, but the case is later dismissed before trial; (3) charges are filed and an individual successfully completes a pretrial Diversion program pursuant to C.R.S. §18-1.3-101; (4) charges are filed and an individual pleads guilty to one or all charges pursuant to a Deferred Judgment and Sentence, which he or she ultimately completes successfully²; (5) charges are filed and the

¹ Effective August 1, 2014, the law pertaining to the sealing of criminal records will be relocated to C.R.S. §24-72-702.

² The Colorado Supreme Court granted certiorari to answer the question of whether records pertaining to charges of Driving While Ability Impaired and Driving Under the Influence are eligible to be sealed in cases where the charge is dismissed as part of a successfully-completed Deferred Judgment and Sentence. *Harte v. District Court*, 12SC958 (July 22, 2013). The Court has not yet released its opinion in this case.

individual is acquitted of all charges at trial. Prior convictions for certain petty, misdemeanor and felony drug offenses may also be eligible under certain limited circumstances.

Once you determine that the record of your case is eligible to be sealed, you must successfully argue to the court that your interest in sealing the record outweighs that of the public's in maintaining access to that information:

If the court finds that the harm to the privacy of the defendant or the dangers of unwarranted, adverse consequences to the defendant outweigh the public interest in retaining the conviction records, the court may order the conviction records, except basic identification information, to be sealed. In making this determination, the court shall, at a minimum, consider the severity of the offense that is the basis of the conviction records sought to be sealed, the criminal history of the defendant, the number of convictions and dates of the convictions for which the defendant is seeking to have the records sealed, and the need for the government agency to retain the records. C.R.S. §24-72-308 (2013).

As the language of the law makes clear, no one is *entitled* to have their record sealed – whether or not that occurs is entirely up to the court. Hiring a skilled and experienced attorney to carefully craft your argument can have a huge impact at this stage of the process.

So what about Adam? He would be pleased to find out that the record of his case is eligible to be sealed because the prosecutor dismissed all of the charges against him before trial. An effective attorney filing Adam's Petition to Seal will point out to the court numerous reasons why maintaining a public record of the case against him is unwarranted. Perhaps most compelling is the likelihood of negative consequences Adam may experience at the hands of a potential employer or other individual who could easily misinterpret the records or presume foul play even though Adam was exonerated. While entities such as law enforcement and other criminal justice agencies can always access sealed records³, Adam will be largely protected from unfair consequences imposed by the public and private entities that will unlikely have access to information about his case.

If you have ever been arrested or otherwise faced criminal charges and you think your case may be eligible for sealing, contact the attorneys at Foster Graham Milstein & Calisher LLP. We have extensive experience in these matters and can help you navigate this important process with efficiency and success.

³ Sealed records remain accessible to law enforcement and limited other public agencies. Further, you may be required to disclose information about the records to law enforcement, a regulatory agency or an employer under certain circumstances. A record that is "sealed" is different from a record that is "expunged" – an expunged record is removed from the system while a sealed record is placed under highly restricted access. Adult records are not eligible to be expunged under any circumstances.